

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-211942, B-211942.2 **DATE:** October 24, 1983

**MATTER OF:** Doane Building Corporation; Window Supply Co.

**DIGEST:**

Where protesters fail to submit bids before the scheduled bid opening date because of incorrect oral assurances given by a contract specialist that the solicitation would be amended and that the bid opening date extended, fact that bid opening is not extended does not require resolicitation where there is no evidence of a conscious or deliberate effort to exclude the protesters from participating in the competition and where adequate competition was received which resulted in reasonable prices.

Doane Building Corporation and Window Supply Co. protest the award of a contract by the Department of the Army, Fort Sheridan, Illinois under invitation for bids (IFB) DAKF15-83-B-0026 on the basis that the Army excluded them from bidding. They ask that the IFB be canceled and the procurement be readvertised. For the reasons set forth below, we deny the protest.

The IFB solicited bids for the replacement of basement windows in Family Housing Area #2 at Fort Sheridan. Prior to the scheduled bid opening date of May 24, both protesters, during telephone calls they initiated, were orally informed by a contract specialist at Fort Sheridan that the solicitation would be amended and the bid opening date extended to June 1. The agency did prepare a proposed amendment, but it was not ready for distribution until May 24. The contracting officer, who had not been aware of the proposed amendment, reviewed it at that time, determined that the proposed changes would have no effect on bid prices, and decided not to issue the amendment but instead to open bids as scheduled. At that time, the contracting officer was unaware that the protesters had been informed that the bid opening would be extended. The protesters, in reliance upon the earlier oral advice, did not submit bids

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in time for the opening. The agency received four bids with the lowest being from Dole Construction Co. at \$155,702. The other bids were \$159,840, \$173,000 and \$1,344,125. The government estimate was \$155,950.

The protesters state that they reasonably relied on the advice of the contract specialist and maintain that they were therefore improperly prevented from submitting bids when the bid opening date was not extended. Consequently, they argue that the solicitation should be canceled and the procurement resolicited.

We find the protests to be without legal merit. Action of an agency which precludes a potential supplier from competing on a procurement does not constitute a compelling reason to cancel a solicitation and resolicit the requirement so long as adequate competition and reasonable prices are obtained and there was no deliberate or conscious attempt to preclude the potential supplier. See Ontario Knife Company, B-205142, February 10, 1982, 82-1 CPD 125.

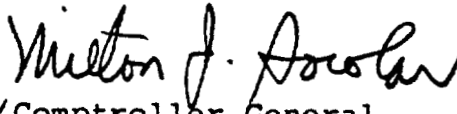
Here, it is clear that there was no deliberate attempt to exclude either of the protesters. Rather, the record shows that the contract specialist acted in good faith in advising the protesters that bid opening would be extended--certainly that was the intention at the time. The decision of the contracting officer, who did not know of the advice provided to the protesters, that there was no need to issue the amendment when it finally became available shortly before the scheduled bid opening clearly was not intended to preclude the protesters from bidding, but was a reasonable response to the situation in which he found himself.

Moreover, we must point out that the solicitation warned bidders that oral explanations or instructions given before the award of a contract would not be binding. Thus, the protesters relied on the advice they received at their peril. See Canon USA, Inc., B-209607, May 24, 1983, 83-1 CPD 559.

Finally, since the agency has received four bids, at least two of which seem to be reasonably priced compared to the government estimate, we believe that the agency obtained adequate competition under the solicitation. See Granite Diagnostics, Inc., B-211711, June 7, 1983, 83-1 CPD 620.

We note that Doane seems to challenge the contracting officer's conclusion that the proposed amendment would have had no effect on the bid prices. Since the contracting officer chose not to issue the amendment incorporating the changes into the solicitation, their estimated cost is irrelevant as the awardee will not be obligated to conform to the changes.

The protests are denied.

*for*   
Comptroller General  
of the United States